

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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**ILLUMINA, INC.,**

Case No.: 09-cv-277

Plaintiff,

v.

**AFFYMETRIX, INC.**

Defendant.

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**PLAINTIFF ILLUMINA, INC.'S ANSWER TO  
DEFENDANT AFFYMETRIX, INC.'S COUNTERCLAIM**

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Plaintiff Illumina, Inc. ("Illumina") answers the counterclaim of Defendant Affymetrix, Inc. ("Affymetrix") as follows:

1-24. No response is required for paragraphs 1-24 of Affymetrix's Answer to Illumina's Second Amended Complaint, and none is made.

25. Illumina admits that Affymetrix purports to assert a counterclaim for declaratory judgment under 28 U.S.C. §§ 2201 and 2202. Illumina admits that the court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). Illumina is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 25, and therefore denies them.

26. Illumina admits the allegations of paragraph 26.

27. Illumina denies the allegations of paragraph 27, and specifically denies that U.S. Patent No. 7,510,841 ("the '841 patent") is invalid.

28. Illumina denies the allegations of paragraph 28.

29. Illumina admits that an actual and justiciable controversy exists between Illumina and Affymetrix with respect to the ‘841 patent. Illumina denies that Affymetrix is entitled to a declaratory judgment that the ‘841 patent is invalid and not infringed. To the extent not expressly admitted, Illumina denies the allegations of paragraph 29.

### **PRAYER**

WHEREFORE, Illumina seeks the following relief from this Court:

- A. Dismissal of Affymetrix’s counterclaim with prejudice, and an adjudication that Affymetrix shall take nothing against Illumina by the counterclaim;
- B. An adjudication and declaration that the ‘841 patent, and each and every claim thereof, are valid;
- C. An adjudication and declaration that Affymetrix has willfully infringed the ‘841 patent, as provided by 35 U.S.C. § 284;
- D. An adjudication and declaration that this is an exceptional case under 35 U.S.C. § 285 and that Illumina shall be awarded its attorney’s fees and costs, as provided under 35 U.S.C. § 285 and Fed. R. Civ. P. 54(d); and
- E. For such other such relief as this Court deems just and proper.

Dated this 14th day of September, 2009.

Respectfully submitted,

/s/ Robert A. Lawler

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